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US Court of Appeals
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United States Appeals Court
Ninth Circuit

Paul M. Carrick,
Plaintiff,

vs.

Santa Cruz County et al.,
Defendant

Case No 13-16730

REPLY BRIEF

(fmr Dist Case No.: CV-12-
03852-LHK)

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16 CASES

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12	Act of Congress, Mar. 3, 1851,et seq 1891	10
13	Homestead Certificate 4889	
14	4,6,7,8,10,13,14,15,17,18,19,20,23,24,25	
15	United States Public Law No. 94-549, 1976, Sec.70 11,18	
16	Hayden-Cartwright Act	10
17		
18	Land Patent Opinions of the United States Attorney	
19	General's Office (Sept. 1964)	19,21
20	Homestead Act 12 Stat 392, 37 th congress,1862	
21		10,15,18,20
22	Treaty of Guadalupe Hidalgo 9 Stat 922, (1848)	10
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24	California Constitution	5,8,18,19,26
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1 CERTIFICATE OF SERVICE 27
2 ATTACHMENT: ORDER GRANTING COUNTY'S AUTHORITY TO
3 ABATE, October 10, 2013 28
4

5 **HISTORICAL OVERVIEW**

6 In their ANSWER, Defendants repeat old arguments
7 previously brought up in District Court and address
8 none of the essential issues brought up in the District
9 Court case CV 12-03852 nor the errors brought up by the
10 APPEAL BRIEF. These errors emanate from local
11 ignorance of and abuse of Homestead Certificate 4889 as
12 well as probable intentional mischievous intent. The
13 Plaintiff addressed inapplicability of collateral
14 estoppel in APPEALS BRIEF p. 22,37 with numerous
15 citations. The County simply repeats its, non-
16 statutory laws, (doc 8:135-144), not acknowledging
17 that they are pre-empted by and conflict with state and
18 federal law. The County never acknowledges, 1), the
19 Constitutional restriction of States to state affairs,
20 APPEAL BRIEF pg. 13,14; 2) Specific protections
21 contained in Land Patent 4889 directly conflict with
22 Santa Cruz County Codes, APPEALS BRIEF pg. 12,21; 3)
23
24
25

1 the declaration of the California's Attorney General of
2 Constitutional violation of Building Codes of
3 separation of powers by the Constitutions of the United
4 States and California, APPEALS BRIEF pg. 19,29; 4) lack
5 of compliance with Santa Cruz County with the
6 California legislature's attempts to remediate
7 government violation of separation of powers in
8 building codes by a citizen's Appeal Board, APPEALS
9 BRIEF pg. 19,20; 5) Depriving Voters of Santa Cruz
10 County of their Constitutional rights to decide
11 County's institution of the Planning Department,
12 APPEALS BRIEF pg. 20.

13
14
15
16 Santa Cruz County defendants answer none of the
17 County's offenses against rights, privileges, and
18 immunities which the Land Patent authorizes. The
19 offenses are same complaints 1-32 as in the Complaint
20 submitted to the District Court August 2012. Land
21 Patents are intended by Congress to support the U.S.
22 Constitution, Hooper v. Schiemer, 64 U.S.(123 How) 235
23 (1859).

1 The fact that all of the Defendants have taken
2 oaths to uphold the laws of the California and the
3 United States, Lack of mention of federal law Land
4 Patent 4889 and its case law support in its ANSWER
5 implies that they do not wish to ruled by the laws of
6 the United States of America. Are the Santa Cruz
7 County defendants so out-of-touch with the government
8 of the United States that they do not know that in its
9 beginning years it replaced a tyrannical king as sole
10 sovereign with every man being a sovereign? Cisholm v.
11 Georgia, 2 U.S. 415 (1793).
12
13
14

15 **AJUDICATION COMPLETE**

16 Except for legal interpretation of Homestead
17 Certificate 4889 and the October 10, 2013, ORDER
18 CONFIRMING THE COUNTY'S AUTHORITY TO ABATE, the County
19 of Santa Cruz has long since finished deciding this
20 case. No 'res judicata,' (already judged), is
21 possible in the present case because the judgment has
22 not yet included above mentioned recitation of the
23 Homestead Certificate 4889 grant's covenants,
24
25

1 SUPPLEMENTAL EXCERPTS VOL.1, 8193,103. The ORDER
2 GRANTING SANTA CRUZ COUNTY'S AUTHORITY TO ABATE, (
3 attached), exceeds the limits of the original April 9,
4 2010, Order and is case H040261 in California Court of
5 Appeals, Sixth District. The grantee, the Plaintiff,
6 must be first considered before the equitable
7 considerations of the April 9 Order may be considered,
8 APPEAL BRIEF pg. 16.
9

10
11 Since Summary Judgment in August 29, 2009, the
12 Plaintiff continues to deny that the County of Santa
13 Cruz has jurisdiction over his property under Homestead
14 Certificate 4889. Santa Cruz County's Complaint should
15 be directed at the United States whose legislature
16 created and whose President executed Certificate 4889
17 releasing from federal ownership, defining 4889
18 Appurtenant rights, which seem to be the source of the
19 County's complaint, are seen protected by 42 USC 15
20 case history as well as by wording of Homestead
21 Certificate 4889 itself. The unjust and illegal fine
22 and punishment by Santa Cruz County for my compliance
23
24
25

1 with Homestead Certification 4889 is long since under-
2 way. Many similar cases to this one have been listed
3 in the APPEAL BRIEF. One would have to be incredulous
4 to consider that res judicata, collateral estoppel, the
5 Rooker-Feldman, doctrine Younger-absent doctrine, or
6 the umbrella Full Faith and Credit has any longer any
7 restraint to prosecute the Santa Cruz County defendants
8 in the Ninth Circuit Appeals Court for their willful
9 disobedience to the Laws and Constitutions of
10 California and the United States. Objections have been
11 renewed throughout this case. Justice Douglas in his
12 minority dissenting opinion in Younger v. Harris (
13 1972) 91 S.Ct. 746, stated " Equity jurisdiction will
14 be exercised to enjoin the threatened enforcement of a
15 state law which contravene the federal Constitution
16 whenever it is essential in order effectually to
17 protect property right and the rights of persons
18 against injuries otherwise remediable; and in such a
19 case a person, who is an officer of the state is
20 clothed with the duty of enforcing its laws and who
21
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25

1 threatens and is about to commence proceedings, either
2 civil or criminal." This present case is such a case
3 as Justice Douglas was talking about.

4 Now the County seeks to destroy the Plaintiff's
5 property, (see the attached ORDER GRANTING COUNTY'S
6 AUTHORITY TO ABATE, October 10, 2013). Destruction of
7 the Plaintiff's homestead by a local municipality is
8 not tolerated by Congress, City of Los Angeles v.
9 Venice Peninsula Properties, 31 Cal 3d 288; Gibson v.
10 Chouteau, 80 U.S. 92, 1871. In the above two cases,
11 Venice Peninsula would have lost an irreplaceable
12 habitat and Chouteau would have lost his homestead had
13 federal court not intervened.
14
15
16

17 More on point is Couer D'Alene Tribe of Idaho v.
18 Hammond, 384 F. 3d 674 C.A.9 2004, Aug. 19, 2004.
19 Noting that the U.S. Supreme Court rejected the claim
20 of collateral estoppel against the government in U.S.
21 v. Mendoza, 464 U.S. 154, 104 S.Ct. 568, 78 L.Ed, 2d
22 379 (1984)commenting that "the Government was situated
23 differently from private parties for issue preclusion."
24
25

1 The immediate to collateral estoppel was the Hayden-
2 Cartwright Act that protected Indians. They used the
3 Homestead Act as collateral precedent in their decision
4 in favor of the Indians.

5 Just as the Hayden-Cartwright Act defends treaties
6 with Indians, the Homestead Certificate 4889 defends
7 Treaty of Guadalupe Hidalgo with Mexico and is
8 separated from State jurisdiction by U.S. Constitution
9 Art.1 Sect. 10 Cl. 1.
10

11 Because the Homestead Certificate 4889 is not
12 attributable to the above defendants, (because none of
13 them were around in 1890 to object to the covenants
14 included in Thomas Maymen's Homestead Certificate
15 4889) (see SUPPLEMENTAL EXCERPTS OF RECORD VOL
16 1:81,93,103), and therefore was handled in a separate
17 federal case, CV 13-01642. ¹This case was handled by
18 the same judge, who apparently continued to disbelieve
19 even that the Homestead Act is any longer viable
20 despite citation of United States Public Law No. 94-
21
22
23
24

25 ¹ Act of Congress, March 3, 1851, covenant final time

1 549, 1976, Sec. 701, (Doc 104-15). That case was
2 dismissed as well and is being appealed to the Ninth
3 District as H2-CV-230542. Because of the difference of
4 parties, the present case being appeal is not res
5 judicata against this Quiet Title Action. In 28 USCS
6 2409a, the government gives up its sovereignty so that
7 the deficiency in the eyes of Santa County in Homestead
8 Certificate 4889 that the Santa Cruz County supervisors
9 failed to object to in 1890, lack of a requirement for
10 obtaining building permits by Thomas Maymen, may be
11 addressed. Prior to this case being Dismissed by
12 District Court and Appealed by the Plaintiff, the
13 County of Santa Cruz acceded to the Plaintiff's Notice
14 for Removal under 28 USCS 1441 on April 10, 2013. The
15 Plaintiff continues to assert Notice of Removal to
16 Ninth Circuit Appeals Court. Notice of Transfer was
17 brought up in APPEALS BRIEF pg. 9. The County did not
18 mention it in their ANSWER.
19
20
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LAND LAW: BACKGROUND OF LAND PATENTS IN AMERICAN HISTORY

Both Santa Cruz County and U.S. District Court seem to misunderstand United States Land Law. They seem to regard it as the source of city parcels which are bought and sold like chattels. Rural land and city land are as different as apples and oranges. Rural land owners have to provide most of their own services whereas city owners simply plug into a shared service infrastructure consisting of roads, electricity, water.

Being a surveyor, the father of our country, George Washington set up a system of land conveyancing and possession when no infrastructure existed. It is based on Biblical land law in which all land is possessed but none is owned² in the sense that chattels are owned. Therein, Land and its appurtenances are possessed only by assignment. Assignment can be by inheritance or by transfer of the assignability. The transfer is accomplished either by grant or by putting up a

² Leviticus 25:23

1 valuable consideration. Assignment of possession is
2 forever. Boundaries of assigned tracts are permanent³
3 and arranged in a vast grid of square townships which
4 cover the parts North America which lie in the United
5 States. Boundaries left by previous occupants --
6 Indians, Spanish, and French--lines between various
7 landmarks such as trees and streams, Chisholm v.
8 Georgia, 2 U.S. 415, (1793). There is no foreclosure
9 for payment of debts, U.S. v. McKenzie Co, N.D. 187 F.
10 Supp. 470.
11
12

13 The APPEAL BRIEF, pg 9-14, shows by citation that
14 Land Patents, in general, and Homestead Certificate
15 4889, in particular, establish the Constitution of the
16 United States. They rid the federal government of
17 unclaimed land by Art. IV Sect III Cl II, but provide
18 statutory support to Art. 5 of the Bill of Rights and
19 Art. 14 of Due Process, Hooper v. Schiemer, 64 U.S.(
20 123 How) 235 (1859).
21
22
23
24

25 ³ Deuteronomy 19:14 but without Leviticus 25:10 jubilee.

1 **NO CONSULTATION OF HOMESTEAD CERTIFICATE 4889**

2 The Superior court records offered by Santa Cruz
3 County's Judicial Notice to Federal District Court
4 supporting their contentions of violations by the
5 Plaintiff on his property and his owning money as a
6 result are proof that no requirements of Homestead
7 Certificate 4889 were ever consulted. California
8 Civil Code 1066-72, Interpretation of Grants, prescribe
9 necessary steps for that should have occurred.
10

11 Homestead Certificate 4889 along with all land patents
12 is a grant, APPEAL BRIEF p6. There must be recitation
13 of its covenants before any equitable action on the
14 property can occur. For instance, how does the County
15 even know that the Plaintiff even owns the property?
16 Only Homestead Certificate 4889 and the chain of title
17 leading to the United States proves the Plaintiff's
18 ownership. Recitation of Homestead Certificate 4889
19 covenants was begun in the May 11, 2006, Protest
20 Meeting mentioned below.
21
22
23

24 How many appurtenant rights were violated by the
25 County? Both the FAC and SAC list many. The County's

1 own documents given Judicial Notice, prove its own
2 legal violations by its through action against the
3 Plaintiff. Initial Declarations include the beginning
4 of proof of complicity per FRCP 9(b) by the Defendants
5 in violating the Plaintiff's civil rights, 28 USCS
6 1983. Proof will be completed if and when Discovery
7 begins.
8

9 That the Homestead Act was designed to protect
10 farms was a subject of the Plaintiff's APPEALS BRIEF.
11 The County never showed how their actions do anything
12 but destroy the viability of the Plaintiff's farm by
13 their illegal attacks against it. Discovery will also
14 prove that.
15
16

17 **MISSLEADINGS ADDITIONS**

18 The MISLEADINGS section of APPEAL BRIEF,
19 November 14, should have included the fact that the
20 initial presentation of Homestead Certificate 4889 and
21 its requirements were made in an administrative
22 meeting, (Protest Meeting), on May 11, 2006,
23 preparatory to Summary Judgment and Trial, (VOLUME 2
24
25

1 SUPPLEMENTAL EXCERPTS OF RECORD, page 132). No minutes
2 were kept of that meeting contrary to County Code
3 1.12.070 (D), (doc 65-140). The meeting's
4 Administrator was not qualified, (doc 65-140). The
5 Letter of Determination which the administrator was
6 supposed to write, (see above), was written by someone
7 who had not even attended the meeting.
8

9 The Letter of Determination opposed Land Patents in
10 general as if they were arguments being put forth
11 against municipal governments and not United States law
12 and muniments of private property. The County's case
13 consists of "equitable doctrines," Doc 104-14. There
14 is little equitable about grants such as land patents.
15 By California Civil Code 1069, they are all for the
16 benefit of the grantee:
17
18

19 "A grant is to be interpreted in favor of the
20 grantee, except that a reservation in any grant, and
21 every grant by a public officer or body, as such, to a
22 private party, is to be interpreted in favor of the
23 grantor. "
24
25

1 The Plaintiff offered his personal notes about what
2 occurred in the May 11, Protest Meeting as evidence in
3 the Trial of November 9, 10, 2006, but they were not
4 accepted.

5 This administrative meeting was yet one more
6 deception by the County of Santa Cruz to later serve it
7 in winning its Superior Court decision against the
8 Plaintiff. The meeting, the Letter of Determination,
9 and lack of qualification of the participants were
10 objected to at the trial. They were not brought up
11 again in this Appeal or in the District Court case
12 except to establish that Homestead Certificate 4889 was
13 brought up at the Superior Court of California trial
14 and ignored by that Court.

15 Taken together, its deceptive practices are a web
16 of entrapment of property owners of the County: 1. "as
17 built" building permits unapproved by State of
18 California. 2. Notice of Violation forms are
19 plagiarized from California County Recorders
20 Association. 3. Conglomeration of Planning Department
21
22
23
24
25

1 and Building Department is unapproved by Santa Cruz
2 County voters as required by California Constitution.

3 4. Lies that Homestead Act cancelled. 5. Lied about
4 pending agreement with County. There are many more
5 frauds perpetuated by the Defendants and their cohorts
6 which verifiable by inspection of Records and possibly
7 traceable to their sources.
8

9
10
11 **COUNTY OFFERS NO OPPOSITION TO HOMESTEAD CERTIFICATE 4889**

12 The Plaintiff had 97 Land Patent citations in his
13 Appeal Brief. The County offered one Land Patent
14 citation that was discontinued and falsely claimed the
15 rest were also discontinued.⁴
16

17 Santa Cruz County's case consists entirely of
18 equitable arguments and selected County Codes of
19
20
21
22
23
24

25 ⁴ United States Public Law No. 94-549, 1976, Sec. 701

1 unconfirmed authenticity and dubiously representative
2 of California State Law.⁵

4 **COUNTY'S CASE CONSISTS OF EQUITABLE CONSIDERATIONS**

5 The County claims its action is "essentially one in
6 equity and the relief sought depends upon the
7 application of equitable doctrines" in its opposition
8 Jury Trial, Doc 104-14.

9 But "no equitable interest however strong, to land
10 described in such a patent, can prevail at law against
11 the patent," Land Patent Opinions of the United States
12 Attorney General's Office, (Sept 1969).

14 But "State statutes that give lesser authoritative
15 ownership of title than the patent, cannot even be
16 brought into federal court," Langdon v. Sherwood, 124
17 U.S. 74, 81 (1884).

23 ⁵ Santa Cruz County is a General Law County and by
24 California Constitution Art. 11 Sect. 6, this obligates
25 it to State Law and no more.

1 **LAND PATENTS ARE TO ENCOURAGE LAND DEVELOPMENT**

2 Homestead Certificate 4889 contains the words of
3 the Homestead Act of May 20, 1862, "To secure
4 Homesteads to actual Settlers on the Public Domain," as
5 its purpose. That means build things. Every homestead
6 needs a home.
7

8 Case law supports this purpose of land patents.
9 "actual settlers upon the land," Close v. Stuyvesant,
10 132 HI 607, 617, (1890). "a wise policy, tending to
11 encourage settlement, and to develop the resources of
12 the country," Miller v. Little, 47 Cal 348, 351 (
13 1874) .
14

15 The County would have us believe the purpose of the
16 Homestead Act is selling land so that different parties
17 do not gain title to the same tract. The District
18 Court specifically excludes the appurtenant rights from
19 Land Patent 4889,
20
21

22 **MUCH MORE THAN BILL OF SALE: HOMESTEAD CERTIFICATE 4889**

23 The APPEAL BRIEF shows that Homestead Certificate
24 4889 also protects the property disputed in the present
25 case.

1 "No equitable interest, however strong, to land
2 described in such a patent, can prevail at law against
3 the patent," Land Patent Opinions of the United States
4 Attorney General's Office (Sept. 1964).

5 "Patentee can be deprived of his rights only by
6 direct proceedings instituted by the government,"
7 Putnam v. Ickes, 78 F. 2d 233, denied 296 U.S. 612 (
8 1935) .
9

10
11
12 "A United States patent is protected from easy
13 third party attacks," Fisher v. Ruder, 248 U.S. 314,318
14 (1919) .
15

16 **COUNTY REQUESTED PUNITIVE IMPRISONMENT**

17 County's requested imprisonment was punitive, not
18 coercive. 1) Once imprisonment for contempt is imposed
19 for completed act of disobedience, it is punitive and
20 criminal ;and can never again pass as being coercive.
21 2) Fixed term imprisonment wherein the "captive holds
22 the keys to his cell in his pocket" is coercive but an
23 unconditional sentence forever, as the County requested
24
25

1 is punitive, International Union, United Mineworkers v.
2 Bagwell (1994), 512 U.S. 821, 828. "character and
3 purpose" of the sanction for benefit of complainant is
4 punitive rather than vindicating the authority of the
5 court, Gompers v Buck's Stove and Range, 221 U.S. 418,
6 31 S.Ct. 492, 1911. 3) There was no way the plaintiff
7 could afford the hundreds of thousands of dollars of
8 architectural development demanded by the Court. Judge
9 just said "get a loan," (contrary to ANSWER pg 26).
10 The Plaintiff could not choose to get a permit as
11 ordered. The imprisonment was punitive.
12
13
14

15 **RECORDING GRANTS WITH LIENS SLANDERS TITLES**

16 "In an action to foreclose as a mortgage an
17 absolute deed to secure purchase from the plaintiffs,
18 evidence held to show that the deed was not intended to
19 secure purchases after a certain date," Keese v.
20 Beardsley, 190 Cal. 465, 513 P. 500 CA 1923. ABSTRACT
21 OF JUDGMENT was in fact recorded against the
22 Plaintiff's land rather than the Plaintiff so that the
23 County could foreclose later on in order to obtain
24
25

1 payment. Land Patent is absolute deed to land and
2 foreclosure should not be possible, ANSWER, pg 24,25.
3 The separation of grants and liens in the Recorders
4 Office is useful to remind creditors when foreclosure
5 should not be possible. Liens are an instrument in
6 courts of equity wherein land patents ought not to be
7 judged, Sanford v. Sanford, 139 U.S. 642, 11 S.Ct. 666,
8 35 L.Ed. 290, APPEAL BRIEF pg. 13.
9

10
11 California Government Code 27297 directly weakens
12 property values when dishonest county employees
13 defendants manipulate property titles in County
14 Records.

15
16 27297: "For purposes of this article, a certificate
17 describing real property and any lien thereon claimed
18 pursuant to law for the costs of abatement of a
19 nuisance upon such property, is an instrument affecting
20 the title to or possession of such property."
21

22 The Defendants in this way are liable for Inverse
23 Condemnation in the SAC. ANSWER pg 24.
24
25

LIES OF COUNTY EXPOSED BY HOMESTEAD CERTIFICSATE 4889

There is no State law against unpermitted building and as a common law county, Santa Cruz cannot add to State laws; so instead the County distorts the laws in order to use nuisance laws against unpermitted buildings: 1) Make private residences into public nuisances; 2) Lack of Building permit violations are not found in State land law; 3) Ignore property covenants. Almost all property titles protect appurtenances which are houses. Together with California Civil Code 3482, houses are even prohibits them from being called nuisances. Similarly, Title covenants for railroad property make impossible for communities to legally stop train whistles by calling them nuisances. If communities decide that there are too many buildings, they cannot start calling them nuisances in order to justify demolishing them, (as Santa Cruz County had done with the Plaintiff's buildings—see attached ORDER). ANSWER pg 25, APPEALS BRIEF pg 24,25,34, SUPPLEMENTAL EXCERPTS pgs 125-134.

1 **NO NEW CLAIMS ADDED IN SECOND AMENDED COMPLAINT**

2 No new claims were added, but only existing ones
3 were strengthened. Homestead Certificate 4889 by
4 itself makes the Superior Court contempt order and
5 liens against the property illegal for the above
6 reasons. The SAC provided case law support against the
7 contempt order and against judgment liens against
8 patented property. Other supporting facts could have
9 been added against the contempt order, (see above) and
10 the liens, but the 4889 by itself is sufficient. The
11 District Court erroneously Dismissed SAC by not
12 consulting Public Law 94-579 Sect. 701. ANSWER pg 26.
13
14
15

16 **CONCLUSION**

17 Santa Cruz County stands against public policy,
18 legislative intent, and the overwhelming majority of
19 case law. If Santa Cruz County would conform to
20 accepted principals of interpreting grants it would
21 find that the law of Homestead Certificate 4889 is res
22 judicata applied to the Plaintiff's Silverline Road
23 property. That prevents County's case, Doc 65, from be
24 res judicata itself.
25

1 This county needs to apply Constitutional
2 Separation of Powers per California Constitution 11
3 sec.4 cl. E. to legalize its own government and should
4 not stray out of their jurisdiction worrying whether
5 housing of property owners of the county have
6 "legalized" their own dwellings or not. The Complaint,
7 SAC, lodged in Federal Court lists actions which need
8 to be taken by Santa Cruz County including by the
9 author of the ANSWER, who is a defendant, to conform
10 it's government the standards of the California
11 Constitution and United States Constitution.
12

13
14 The 9th Appeals Court should correct the legal
15 oversights of District Court and respond judgmentally
16 to the County's incredulous response to the Plaintiff's
17 many substantial complaints against their actions
18 backed by case law. It is an insult to the many past
19 judgments by past U.S. Courts against over-reaching
20 State and County governments not to apply them against
21 the egregious transgressions of Santa Cruz County.
22

23
24 Word Count Certificate: 3952 words

25 /s/Paul M. Carrick

9th Circuit Case Number(s)

13-16730

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on (date)

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I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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s/Paul M. Carrick

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